

NORTH ANDOVER WETLANDS PROTECTION BYLAW

(EFFECTIVE 10-20-98)



**North Andover Conservation Department
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Public Hearing(s): 2-11-98; 3-9-98; 4-1-98; 4-8-98; and 4-29-98.
Approved – May 11th, 1998 Town Meeting (Warrant Article #39 - YES 133 NO 45)
Approved – October 20th, 1998 Massachusetts Office of the Attorney General

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178.1 PURPOSE

The purpose of this Bylaw is to preserve and protect the wetland resource areas (as specified in Section 178.2) of the Town of North Andover by regulation of, and control of, activities (as specified in Section 178.2) deemed by the North Andover Conservation Commission (the "Commission") to have significant or cumulatively detrimental effect upon the following interests and values, including: public or private water supply; groundwater; the prevention and control of flooding, erosion, sedimentation, storm damage, and/or pollution; protection of fisheries, wildlife, wildlife habitat and recreation.

178.2 JURISDICTION

Except as permitted in writing by the Commission, or as provided in this Bylaw, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the wetland resource areas described in the following sentence. The Town's wetland resource areas consist of:

- 1) any isolated vegetated wetland,
- 2) any ephemeral pool,
- 3) any vegetated wetland bordering on any creek, river, stream, pond or lake,
- 4) any bank, beach, marsh, wet meadow, bog, or swamp,
- 5) any land under any creek, river, stream, pond or lake,
- 6) any 100-foot buffer zone of wetland areas 1-5 listed above,
- 7) any land subject to storm flowage, or flooding by groundwater or surface water,
- 8) and the 200-foot riverfront area.

The following waterbodies and contiguous 200-foot zones on either side of the waterbody in North Andover have been identified by the Commission as riverfront areas: Mosquito Brook, Rocky Brook, Boston Brook, Cochichewick Brook, Fish Brook, Cedar Brook, Merrimack River and Shawsheen River (See Figure 1-3 Appendix B: North Andover Riverfront Area Maps).

The wetland resource areas listed in 1-8 above are protected in addition to the wetland resource areas protected under the Massachusetts Wetlands Protection Act M.G.L. Chapter 131, Section 40 ("the Act") and its accompanying regulations 310 CMR 10.00.

The Commission shall not grant such permission without receiving written notice of the intention to conduct such activity, and without issuing written permission to do so all in compliance with the provisions of this Bylaw.

178.3 EXEMPTIONS

This Bylaw shall not apply to the following activities:

1. Emergency projects as defined in the Commission's regulations (Section II); or
2. Maintenance, repair or replacement, without substantial change or enlargement, of existing and lawfully located structures or facilities used in the service of the public and used-to provide electric, gas, water, telephone, or other telecommunication services to the public; or
3. Normal maintenance of land in agricultural use, as defined in the Commission's regulations (Section II); or
4. Maintenance and repair of existing public ways.

178.4 APPLICATIONS TO PERFORM WORK AND INFORMATION REQUIRED

All applications to perform activities in the Town's resource areas shall be either in the form of a Request for Determination or a Notice of Intent, or both. Such applications shall contain data and plans as specified in the Commission's regulations, and shall be submitted in complete written form to the Commission as required by this Bylaw, regulations, and application checklist (Appendix A of Regulations). The date which serves to commence the Commission's deliberation period is the date of receipt of the application at its offices, during regular office hours. The Town Conservation Administrator shall be granted the power to make determinations of completeness for applications submitted to the Commission and reject, within two (2) business days, those applications that do not meet the minimum submittal requirements of this Bylaw, regulations, and application checklist. In order to provide sufficient review time the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or applicant's agent, less than seven (7) business days before the scheduled public hearing or public meeting.

The applicable forms may be obtained from the Commission and must be signed by the applicant or applicant's agent where required. The Commission may require further information by Regulation, guideline, or as otherwise deemed necessary by the Commission. In order to comply with the provisions of this Bylaw, each application must be complete as filed, and must comply with the rules set forth herein and Commission regulations. No such application shall be accepted as complete before all permits, variances, and approvals required by the Bylaws of the Town with respect to the proposed activity, at the time of such Notice, have been applied for or obtained. Such Application shall also include any information submitted in connection with such permits, variances, and approvals that is necessary to describe the effect of the proposed activity on the resource areas.

178.5 HEARINGS

A) Combination with State Law Hearing:

The said Commission, in its discretion, may hear any oral presentation under this Bylaw at the same public hearing required to be held under the provisions of chapter 131, section 40, of the Massachusetts General Laws. Notice of the time and place of such hearing(s) shall be given as required below.

B) Notice:

Notice of the time and place of the hearing shall be given at the applicant's expense, not less than seven (7) calendar days prior to the public hearing, by publication in a newspaper of general circulation in North Andover, and by mailing a copy of such notice to all land owners within 300 feet of the land on which the work is proposed. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street-address, if any, or other adequate identification of the location of the area or premises which is the subject of the notice, the date, time and place of the public hearing, the subject matter of the hearing, and the nature of the action or relief requested, if any. Public notice requirements for continued public hearings under this Bylaw shall be the same as the notification requirements set forth in 310 CMR 10.05(5)(b)3.

C) Proof:

The applicant shall have the burden of proving by a preponderance of credible evidence that the activity proposed in the Notice of Intent will not cause adverse impacts to any of the interests and values sought to be protected by this Bylaw. Failure to provide to the Commission adequate evidence for it to determine that the proposed activity does not cause adverse impacts shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary or desirable to carry out the purposes of this Bylaw; or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as seem to the Commission to be reasonable.

Due consideration shall be given to possible effects of the proposal on all interests and values to be protected under this Bylaw and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

D) Continuances:

The Commission may continue a public hearing or public meeting in the following situations:

1. With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or
2. Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

E) Investigations:

The Commission, its agents, officers and employees, may enter upon privately owned land for the purpose of carrying out its duties under this Bylaw and may make or cause to be made such examination or survey as deemed necessary.

178.6 ORDERS AND DECISIONS

A) All Orders and Decisions:

If the Commission determines that the proposed activity does not require the imposition of conditions to preserve and protect the interests of this Bylaw, the applicant shall be so notified in writing.

If, after the hearing, the Commission determines that the proposed activity is significant to one or more interests and values of this Bylaw, the Commission may vote to issue written Orders of Conditions within 21 days of the close of the public hearing. The Commission may impose such conditions, safeguards and limitations on time and use upon such activity as it deems necessary to protect those interests.

The Commission may prohibit such activity altogether, in the event that it finds that the interests and values of this Bylaw can not be preserved and protected by the imposition of such conditions, safeguards or limitations.

B) Security to Assure Performance:

The Commission may, as a part of its Order of Conditions, require, in addition to any security required by any other Town or State Board, Commission, agency or officer, that the performance and observance of the conditions,

safeguards and limitations imposed under this Bylaw on the applicant and owner be secured by one, or both, of the methods described in the following clauses:

1. Deposit:

By the deposit of money, sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such Order of Conditions. Such security, if filed or deposited, shall be approved as to form and manner of execution by Town Counsel or the Town Treasurer.

2. Land Restrictions(s):

By a conservation restriction, easement, or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

C) Duration of Orders:

All Orders of Conditions shall expire three (3) years after the date of issuance. An Order of Conditions may be extended for one year upon the request of the applicant. The request for an extension of an Order of Conditions shall be made to the Commission at least 30 days prior to expiration of the Order of Conditions. The Commission may grant only two (2) extensions for an individual Order of Conditions.

No activity governed by an Order of Conditions shall be performed unless and until all permits, approvals and variances required by the Bylaws of the Town shall have been obtained, such Order of Conditions or notification shall have been recorded or registered at the Essex North District Registry of Deeds or in the North Essex District of the Land Court Department, and all applicable appeal periods have expired. The Commission shall have the right to record or register its Order of Conditions with said Registry or Registry District. In the event that an Order of Conditions issued pursuant to this Bylaw is identical to a final Order of Conditions issued pursuant to the provisions of MGL Chapter 131, Section 40, only one such order need be recorded or registered.

D) Modifications, Amendments, Revocations:

The Commission shall have the power (on its own motion or upon the petition of the applicant, or any person interested) to modify, amend, or revoke an

Order of Conditions. In revoking an Order of Conditions the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. In the case of an amendment to an Order of Conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and Bylaw. No public hearing is required for a modification to an Order of Conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment or revocation of an Order of Conditions.

178.7 CERTIFICATES OF COMPLIANCE

The Commission shall, upon receiving a written request and weather permitting, inspect the resource areas where the activity governed by an Order of Conditions was carried out and issue a Certificate of Compliance (or Partial Certificate of Compliance) to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if it shall determine that all of the activity or activities, or portions thereof, limited thereby have been completed in accord with said order.

178.8 RESPONSIBILITY FOR COMPLIANCE

After the recording of a Notice of Violation or Order , any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any order issued under the Bylaw shall forthwith comply with any such Order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

178.9 RULES AND REGULATIONS

The Commission shall be empowered to establish Rules and Regulations to govern its affairs, including but not limited to fees, definitions, use of consultants, security to assure performance, performance standards for work in wetland resource areas, and such other information which it deems necessary to discharge its responsibilities. After due notice and public hearing, the Commission may promulgate such rules and regulations to effectuate the purposes of this Bylaw, by a majority vote of the duly appointed members.

Failure by the Commission to promulgate such rules and regulations; or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

178.10 ENFORCEMENT, INVESTIGATIONS & VIOLATIONS

In accord with the provisions of M.G.L. Chapter 40, Sections 21D and 31 as well as every other authority and power that may have been or may hereafter be conferred upon it, the Town may enforce the provisions of this Bylaw, restrain violations thereof and seek injunctions and judgments to secure compliance with its Orders of Conditions. Without limiting the generality of the foregoing:

- A) Any person who violates any provision of this Bylaw or of any condition or a permit issue pursuant to it may be punished by a fine pursuant to Massachusetts General Laws, Chapter 40, section 21. Each day or portion thereof during which a violation continues shall constitute a separate offense; if more than one, each condition violated shall constitute a separate offense. This Bylaw may be enforced pursuant to Massachusetts General Laws Chapter 40, section 21D, by a Town police officer, other persons having police powers, Conservation Commissioners or the Conservation Administrator.

In accordance with Ch. 40 S. 21D, violators shall, at the discretion of the enforcement authorities, be charged a penalty. The penalties for violations of this Bylaw or regulations promulgated hereunder may be assessed as follows:

<u>Violation</u>	<u>Penalty/Violation/Day</u>
Alteration of any wetland resource area identified in Section 178.2 of this Bylaw:	\$ 100
Violation of any Order of Conditions:	\$ 100
Depositing any refuse, debris, yard waste or construction material in a wetland or water body:	\$ 100
Alteration of any stream or water body:	\$ 100
Any violation of any section of this Bylaw that occurs in the Lake Cochichewick Watershed:	\$ 100

- B) In the event of a violation of this Bylaw or of any order issued thereunder, the Commission or its agents may issue a stop work order to the owner, the applicant or applicant's agent by certified mail, return receipt requested, or by

posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop work order shall be deemed in violation of the Bylaw; but the failure of the Commission to issue a stop work order for any reason shall not prevent the Town from pursuing any other legal remedy at law or in equity to restrain violations of this Bylaw or promulgated regulations and to secure compliance with its Orders.

- C) The Town shall be the beneficiary of all fines imposed on account of the violation of this Bylaw or promulgated regulations in order to defray the expense of enforcing the same.
- D) Upon request of the Commission, the Board of Selectmen and Town Counsel shall take such legal action as may be necessary to enforce this Bylaw or promulgated regulations and permits issued pursuant to it.
- E) Upon recommendation of the Commission, the Board of Selectmen may employ Special Counsel to assist the Commission in carrying out the legal aspects, duties and requirements of this Bylaw and promulgated regulations.

178.11 CONSULTANT SERVICES ACCOUNT

[NOTE: On October 20th, 1998 the Massachusetts Office of the Attorney General disapproved Section 178.11 (Warrant Article #39 – May 1998 Town Meeting) of the North Andover Wetland Protection ByLaw stating that “MGL c.44, s.53G, which provides Towns with a mechanism to collect consultant fees, is expressly limited to the Town’s Zoning Board of Appeals, Planning Board and Board of Health but not the Conservation Commission.” The Office of the Attorney General therefore determined that any funds that the Commission may wish to assess on applicants must be handled in ways that are consistent with the provisions of MGL c.44, s.53.]

178.12 CAPTIONS AND SEVERABILITY

The captions used herein are for convenience only and are expressly intended to have no legal or binding significance. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any Order of Conditions or decisions which have previously become final.